

ERIC W. SWANIS, ESQ.
Nevada Bar No. 6840
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Email: swanise@gtlaw.com

Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

JOSEPH H. SCHOLER,

Plaintiff,

v.

C. R. BARD, INCORPORATED and BARD
PERIPHERAL VASCULAR,
INCORPORATED,

Defendants.

CASE NO. 2:19-cv-01568-KJD-BNW

**JOINT MOTION TO STAY
DISCOVERY AND ALL PRETRIAL
DEADLINES**

(FIRST REQUEST)

Plaintiff Joseph H. Scholer ("Plaintiff"), Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. ("Bard"), pursuant to Fed. R. Civ. P. 26(c) and (d), respectfully request that this Court temporarily stay discovery until November 30, 2019 while the Parties pursue settlement discussions. In support thereof, the Parties state as follows:

1. This case was part of a Multi-District Litigation proceeding called In re: Bard IVC Filter Litigation, pending before Senior Judge David Campbell of the District of Arizona.

2. After four years, the completion of general issue discovery, and conducting three bellwether trials, Judge Campbell has ordered that cases, which have not settled or are not close to settling, be transferred to the appropriate jurisdictions around the country for case-specific discovery and trial. As a part of that process, he established a "track" system, wherein

1 certain cases were placed on tracks either to finalize settlement paperwork, continue
2 settlement negotiations, or be remanded or transferred.

3 3. Plaintiff's counsel recently notified Defense counsel that this case was placed
4 on an incorrect "track" and thus inadvertently remanded and transferred, even though
5 settlement discussions are ongoing.

6 4. A district court has broad discretion over pretrial discovery rulings. *Crawford-*
7 *El v. Britton*, 523 U.S. 574, 598 (1998); *Miller v. Safeco Title Ins. Co.*, 758 F.2d 364, 369 (9th
8 Cir. 1985) ("[t]he district court is given broad discretion in supervising the pretrial phase of
9 litigation"); *Johnston v. Gedney*, 2019 U.S. Dist. LEXIS 127392, at *7 (D. Nev. July 30, 2019)
10 (same); *RH Kids, LLC v. Lehman*, 2018 U.S. Dist. LEXIS 17811, at *3 (D. Nev. Jan. 3, 2018)
11 (granting a stay of the proceedings) ("[f]ederal district courts have 'wide discretion in
12 controlling discovery'" (quoting, *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988)));
13 *Evanston Ins. Co. v. W. Cmty. Ins. Co.*, 2014 U.S. Dist. LEXIS 136129, at *5 (D. Nev.
14 Sept. 25, 2014) ("[t]he Court has inherent power to control its docket, including the discretion
15 to stay proceedings") (citing, *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55, 57 S. Ct. 163, 81
16 L. Ed. 153 (1936)).

17 5. Under Federal Rules of Civil Procedure 26(c) and 26(d), a court may limit the
18 scope of discovery or control its sequence. *Britton*, 523 U.S. at 598. Although settlement
19 negotiations do not automatically excuse a party from its discovery obligations, the parties
20 can seek a stay of discovery prior to a deadline. *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th
21 Cir. 2012) (discussing the court's discretion in exercising a stay); *Bacon v. Reyes*, 2013 U.S.
22 Dist. LEXIS 143300, at *4 (D. Nev. Oct. 3, 2013) ("[w]hether to grant a stay is within the
23 discretion of the court") (citing, *Munoz-Santana v. U.S. I.N.S.*, 742 F.2d 561, 562 (9th Cir.
24 1984)).

25 6. Thus, the Parties jointly move this Court for an order staying discovery until
26 November 30, 2019 to allow the parties to continue to engage in settlement discussions. This
27 will further facilitate settlement discussions and prevent unnecessary expenditures of the
28 parties and judicial resources.

1 7. The Parties agree that the relief sought herein is necessary to handle the case in
2 the most economical fashion, yet allow sufficient time to schedule and complete discovery if
3 necessary, consistent with the scheduling obligations of counsel. The relief sought in this
4 Motion is not purely for delay, but so that justice may be done.

5 WHEREFORE, the Parties jointly request that discovery and all pre-trial deadlines be
6 stayed until November 30, 2019 to allow the parties to conduct ongoing settlement
7 negotiations.

8 DATED this 18TH day of September, 2019.

9 DUDLEY LAW FIRM LLC

GREENBERG TRAURIG, LLP

11 By: /s/ Elizabeth Dudley
12 Elizabeth Dudley, Esq.
13 Kansas Bar No. 21582
14 23438 SW Pilot Point Road
15 Douglass, Kansas 67039
16 Telephone: (316) 746-3969
17 Facsimile: (316) 746-3922
18 liz@lizardudleylaw.com

19 *Counsel for Plaintiff*

By: /s/ Eric W. Swanis
ERIC W. SWANIS, ESQ.
Nevada Bar No. 6840
10845 Griffith Peak Drive
Suite 600
Las Vegas, Nevada 89135
Telephone: (702) 792,3773
Facsimile: (702) 792-9002

*Counsel for Defendants, C. R. Bard, Inc.,
and Bard Peripheral Vascular, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on **September 18, 2019**, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive such service, and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants:

Elizabeth Dudley, Esq.
Kansas Bar No. 21582
DUDLEY LAW FIRM LLC
23438 SW Pilot Point Road
Douglass, Kansas 67039
Telephone: (316) 746-3969
Facsimile: (316) 746-3922
liz@lizardudleylaw.com
Counsel for Plaintiff

/s/ Evelyn Escobar-Gaddi

An employee of GREENBERG TRAURIG, LLP

Based on the parties' stipulation, IT IS ORDERED that discovery is stayed until 11/30/2019 pending the parties' settlement discussions. IT IS FURTHER ORDERED that the parties must file a joint status report by 12/13/2019.

Dated: 9/23/19



**Brenda Weksler
United States Magistrate Judge**